THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NOS : 12930 of 1996; 12931 OF 1996;

12932 OF 1996 & 12935 OF 1996

DATED: 03-01-2006

WRIT PETITION No.12930 of 1996

Kantem Guruvulu.

..... PETITIONER

AND

The District Collector , Khammam
Khammam District & 2 others.

.....RESPONDENTS

WRIT PETITION NO : 12931 of 1996

Mohammad Abdul Rahim.

..... PETITIONER

AND

The District Collector,

Khammam,
Khammam District & 2 others.

.....RESPONDENTS

WRIT PETITION NO : 12932 of 1996

Bonku Prabhakara Rao.

..... PETITIONER

AND

The District Collector,

Khammam,
Khammam District & 2 others.

.....RESPONDENTS

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WRIT PETITION NO : 12935 of 1996

D. Rama.

..... PETITIONER

AND

The Inspector General of Registration & Stamps,
A.P., Hyderabad & 5 others.

.....RESPONDENTS

COMMON ORDER:

Since the all these petitions are filed, questioning the notices issued to the petitioners under Section 7 of the Land Encroachment Act, 1905 (the Act) and the order passed by the Mandal Revenue Officer, Chittoor Mandal (3rd respondent) in RC.No.81/478/96 they are being disposed of by a common order.

2. Third respondent issued notices to petitioners and others under Section 7 of the Act calling upon them to show cause why they should not be evicted from the encroachments made by them into the Government land, by way of construction of houses. Seven of the twelve noticees, including petitioners, sent a common reply to the third respondent. By his order in Rc.B1/478/96 dated 21-06-1996 passed under Section 6 of the Act third respondent directed all the noticees to vacate the premises occupied by them. Hence these petitions.

3. In his counter affidavit third respondent *inter alia* questioned the maintainability of this petition as the petitioners failed to avail the effective alternative remedy of appeal open to them, and alleged that some of the petitioners who are government servants have occupied Government land with a view to enrich themselves.

4. During the course of arguments the learned counsel for the petitioners produced a copy of the letter addressed by the petitioners and others to the Revenue Sub-Divisional Officer, Chintoor mandal wherein they stated that they raised huts on the road margin of the road from Chintoor to Nimmalgudem village near the boundary of the site belonging to the High school and are residing therein, and since third respondent passed orders for their eviction those orders may not be implemented since they are all poor people residing in the houses constructed from their savings, from a long time past.

5. One of the contentions of the learned counsel for the petitioners is that inasmuch as the land in question is situated in agency tracts provisions of the Act do not apply to that land and in any event in view. Section 2 of the Act the provisions of the Act do not apply to the land in occupation of the petitioners.

6. Since the petitioners failed to produce any document to show that the village in which they are residing is in scheduled area I am not able to accept the contention that the land in question is in a scheduled area.

7. As per Section 2 of the Act all public roads, streets, lanes and paths etc., except those mentioned therein belong to the government. The exceptions mentioned therein are:

a. *properties belonging to zamindar, poligar, mittadar, jagirdars, shrotriemdar or any person claiming through or holding under any of them, or*

b. *of any, person paying shist, kattubadi, jodi, poruppu or quit-rent to any of the aforesaid persons, or*

c. *of any person holding under ryotwari tenure, or in any way subject to the payment of land revenue direct to Government, or*

d. *of any other registered holder of land in proprietary right, or*

e. *of any other person holding land under grant from the Government otherwise than by way of licence and as to lands, save also insofar as they are temple sites or owned as house site or backyard.*

Since petitioners do not claim that they are the owners of the property in their possession and since the contents of the letter addressed by the petitioners to the Revenue Divisional Officer show that they occupied the land on the road margin about twenty years back, they, even *prima facie,* cannot be said to have perfected their title to that land by adverse possession.

8. Since the property occupied by the petitioners admittedly is a road margin, that property *prima facie* belongs to the Government and so they can be evicted by taking recourse to the provisions of the Act. The averment in the counter affidavit of the third respondent that some of the petitioners are Government servants is not denied by filing a reply affidavit. Government servant encroaching into Government lands and seeking protection of such encroachment through this Court is rather strange.

9. In the above circumstances third respondent directing eviction of the petitioners overruling the objection raised by them, needs no interference from this Court moreso when petitioners failed to avail the effective alternative remedy of appeal under the provisions of the Act.

10. Hence, the Writ Petitions are dismissed with costs.

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(C.Y.SOMAYAJULU,J)

3rd January, 2006

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